



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: APRIL 24, 2023

IN THE MATTER OF:

Appeal Board No. 628084

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 628084 and 628085, the claimant appeals from the decisions of the Administrative Law Judge filed February 6, 2023, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective May 16, 2022 through May 22, 2022, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification; and holding the claimant ineligible to receive benefits, effective May 23, 2022 through September 11, 2022, on the basis that the claimant did not comply with registration requirements.

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

Our review of the record reveals that the case should be remanded to hold a hearing. At the hearings, the claimant contended that she had telephone records and a screen shot demonstrating that she successfully filed a claim in May 2022 and that she subsequently called the Department of Labor to certify for benefits each week. In the interest of justice, the Board has determined to provide the claimant another opportunity to produce this evidence. The claimant is directed to submit copies of her phone records and screen shot to the Hearing Section ahead of the hearing. At the remand hearing, the claimant also shall be questioned regarding

whether she filed her claim in May 2022 using the web browser on her phone, as the claimant testified at the hearing held on December 15, 2022, or using her MacBook, as the claimant's witness testified at the hearing held on January

31, 2023. The Judge also shall confront the claimant with the Department of Labor's Call History Report (Exhibit 4) and shall ask the claimant why she called the Department of Labor on May 4, 2022 even though her last day of work was not until May 10, 2022. The Commissioner of Labor is directed to appear and produce a witness to testify regarding the phone calls the Department of Labor received from the claimant during the time period at issue and the substance of those communications. The Judge shall afford the Commissioner an opportunity to present additional testimony and evidence, and to cross-examine the claimant. The Judge shall take such further testimony and evidence as may be necessary to complete the record.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of failure to comply with certification and registration requirements, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues of failure to comply with certification and registration requirements, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER